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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 810 (CM)

5 MOSHE MIRILISHVILI, DAMON  
6 LEONARD, JOMARIS JAVIER, RAY  
7 WILLIAMS, DORIAN AVERY,  
8 TASHEEN DAVIS, GANEENE GOODE,  
9 THOMAS WHITE, CAROLYN  
10 MIDDLETON, JOSEPH GRAY, KEVIN  
11 FREY,

Defendants.

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11 New York, N.Y.  
12 October 1, 2015  
13 4:20 p.m.

14 Before:

15 HON. COLLEEN MCMAHON,

District Judge

17 APPEARANCES

18 PREET BHARARA,  
19 United States Attorney for the  
20 Southern District of New York  
21 BROOKE CUCINELLA  
22 Assistant United States Attorney

23 WHITNEY SCHLIMBACH  
24 LINDSAY LEWIS  
25 Attorneys for Defendant Mirilishvili

IRVING COHEN  
Attorney for Defendant Leonard

RICHARD JOHN MA  
Attorney for Defendant Javier

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## APPEARANCES (Continued)

STEWART ORDEN

Attorney for Defendant Williams

HAROLD RAMSEY

Attorney for Defendant Avery

ALAN NELSON

Attorney for Defendant Davis

ROBERT CURTIS GOTTLIEB

JUSTIN HEINRICH

Attorneys for Defendant Goode

THOMAS HAMILTON NOOTER

Attorney for Defendant White

AARON M. GOLDSMITH

Attorney for Defendant Gray

LISA SCOLARI

Attorney for Defendant Frey

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1 THE DEPUTY CLERK: Judge, this is 14 CR 810, United  
2 States of America versus Moshe Mirilishvili, et al.

3 Please state your appearances, and, when you give your  
4 appearance, whom you represent. Government?

5 MS. CUCINELLA: Brooke Cucinella, on behalf of the  
6 government. Good afternoon, your Honor.

7 MR. NELSON: Good afternoon, your Honor. Alan Nelson,  
8 appearing on behalf of Tasheen Davis. Ms. Davis is seated in  
9 the second row of the audience. She's wearing a white smock.

10 THE COURT: Hang on one second.

11 (Pause)

12 THE COURT: Go ahead. Sorry about that.

13 MR. COHEN: Good afternoon, your Honor. Irving Cohen,  
14 appearing for David Leonard. He's seated in the third row.

15 Can you stand up, Mr. Leonard?

16 Thank you, your Honor.

17 MR. RAMSEY: Harold Ramsey, for Mr. Avery, in the jury  
18 box.

19 MS. SCHLIMBACH: Good afternoon, your Honor. Whitney  
20 Schlimbach and Lindsay Lewis, from the law offices of Joshua  
21 Dratel, on behalf of Moshe Mirilishvili, who's in the front  
22 row. Good afternoon.

23 MR. GOTTLIEB: Good afternoon, your Honor. Gottlieb &  
24 Gordon, by Robert Gottlieb, for Ganeene Goode, who is in the  
25 second row here, and with me is Justin Heinrich.

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1 MR. GOLDSMITH: Good afternoon, your Honor. Aaron  
2 Goldsmith, on behalf of Mr. Gray, who's seated second from you  
3 in the box.

4 MR. NOOTER: Good afternoon, your Honor. Thomas  
5 Nooter, for Thomas White, who is at the end in the jury box.

6 MS. SCOLARI: Lisa Scolari, for Kevin Frey. Good  
7 afternoon, your Honor. Mr. Frey is in the jury box.

8 MR. ORDEN: Your Honor, good afternoon. Stewart  
9 Orden, for Ray Williams, who is standing right now in the  
10 second row.

11 MR. MA: Richard Ma, on behalf of Jomaris Javier.  
12 Ms. Javier is in the third row, wearing a gray blouse or shirt.

13 THE COURT: Okay.

14 There's a decision denying all the motions that we  
15 had, which has been passed out. I'm sorry, there is a  
16 suppression hearing on the voluntariness of the consent to  
17 search. That's precautionary.

18 So what else do we have to do, other than set a date  
19 for that?

20 MS. CUCINELLA: I believe that's it, your Honor, at  
21 least from the government's perspective.

22 THE COURT: Okay. Then let's find out what the  
23 defendants have because they probably have something.

24 MR. NELSON: Well, Judge, I represent Tasheen Davis,  
25 and that's the defendant for whom you've ordered that there

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1 would be a precautionary hearing conducted. I have consulted  
2 with the government concerning a potential date for a hearing,  
3 and if it fits the Court's schedule, we would propose a date  
4 sometime in the middle of November, for two reasons -- one,  
5 co-counsel for the government is starting a trial on Monday and  
6 he will be on trial until the beginning of November, and I for  
7 personal reasons will not be available until sometime in the  
8 middle of November.

9 THE COURT: Okay. In the middle of November, God  
10 willing, and they don't settle, I'm supposed to be on trial. I  
11 have waited for five years to get a commercial case to go to  
12 trial. I scare them or something. The last one settled on the  
13 eve of trial last week. I have another one that's supposed to  
14 start on November the 2nd, which would take me pretty much, I  
15 think, through about the 20th.

16 So could I suggest maybe like December the 2nd?

17 MR. NELSON: That's fine, Judge.

18 THE COURT: Does that work? Does that work for you,  
19 Mr. O'Neil?

20 THE DEPUTY CLERK: Very good, Judge. 10:00 o'clock.

21 THE COURT: So let's say December the 2nd at  
22 10:00 a.m.

23 And we will have a hearing at that point. We will  
24 correct some typos in this decision, we will do that. Before  
25 we put it on ECF, we will do that.

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1 MS. CUCINELLA: Your Honor, I believe that time was  
2 excluded to allow your Honor to decide the pending motions.  
3 We'd ask now to exclude time, depending on your Honor's  
4 preference, either until the suppression hearing or until the  
5 trial date in February, to allow us to continue to discuss  
6 potential pretrial resolutions and for the defendants to  
7 prepare for trial.

8 THE COURT: Well, forgive me if I've gotten something  
9 wrong, but preparing for trial is what the 70 days is for.  
10 That's not a reason to exclude time. When we set a trial date  
11 it's because we could get everybody, because we could get  
12 everybody. We set the trial date on consent.

13 So, as far as I'm concerned, time is excluded until we  
14 get to our trial date because everyone consented to that trial  
15 date. Anybody have a problem with that?

16 COUNSEL: No, your Honor.

17 THE COURT: All right, deafening silence.

18 One of the things I want to bring up given the number  
19 of the defendants and the fact that the government has  
20 indicated that there may be some incriminating statements made  
21 by one defendant against another defendant -- we just don't  
22 know what they are yet -- that motion is only denied, the  
23 Bruton motion is denied because it's premature. And I have  
24 given the government a very early date, like 90 days before  
25 trial, to provide statements and proposed redactions.

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1           And then you all have a week after you get those to  
2       renew your motion when you know what you're shooting at.

3           So, have some possibility that I am going to have 11  
4       defendants at this trial?

5           MS. CUCINELLA: We don't think that's the case. We  
6       are actively engaged with plea negotiations with a number of  
7       defendants, and we anticipate contacting the Court soon to set  
8       additional plea dates.

9           THE COURT: Okay. I'm around this month, I'm in  
10      Part I, or you can always go to the magistrate judge.

11          Mr. Nelson, you stood?

12          MR. NELSON: Yes. I obviously didn't have sufficient  
13      time to review the Court's decision.

14          THE COURT: Well, I just handed it to you.

15          MR. NELSON: So if there are some issues that we would  
16      like to raise, maybe we could write to the Court with respect  
17      to clarification? In particular, I had filed a motion --

18          THE COURT: I wasn't clear?

19          MR. NELSON: Well, I don't know because I haven't had  
20      a chance to read through the decision.

21          THE COURT: You're anticipating that I wasn't clear.  
22      Am I regularly not clear? That's okay.

23          MR. NELSON: Good point there, Judge.

24          As it relates to a bill of particulars, there's one  
25      particular issue that I raised, which might bear on timing of

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1 discovery more than anything else, and despite the fact there's  
2 been a denial of the bill of particulars, and, that is, quite a  
3 number of defendants, including my client, are alleged to have  
4 been a crew chief who sent various individuals to one of three  
5 clinics. While the government has provided all of the records  
6 with respect to both of those clinics, with respect to the  
7 patients that were in the clinics, it's impossible for us to  
8 know who these individuals were who were recruited to go there.

9 So it's kind of looking for a needle haystack as to  
10 who those individuals were, and it becomes relevant in the  
11 context of the review of the medical records and the charts for  
12 some of these patients. They might well have medical needs and  
13 necessity for purposes of going to the clinic and receiving  
14 medication.

15 So I would ask, in the alternative to the bill of  
16 particulars response, that the Court order the government to  
17 provide a list of those patient witnesses that they intend to  
18 rely upon within a month before trial so we might be able to  
19 find those patient charts that are relevant and be able to  
20 appropriately investigate those individuals. Otherwise, we  
21 have thousands of patients and we don't know who are those  
22 individuals.

23 MS. CUCINELLA: Certainly, your Honor. We are happy  
24 to talk to defense counsel about providing additional  
25 information with respect to that. Their clients know who they



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1 were bringing to the clinic. I think they can go to them.

2 We've also produced a number of surveillance photos that show  
3 for many of the crew chiefs when they're bringing patients  
4 in --

5 THE COURT: I'm presuming everyone is innocent here,  
6 of course.

7 MS. CUCINELLA: Understood.

8 THE COURT: I'm not sure that the tapes -- it's kind  
9 of hard to put a name and a file with a person on the tape if  
10 you don't know who the person on the tape is. When the  
11 government shows tapes, they frequently ask the witness, "And  
12 who is that person right there?" or "Do you see yourself on  
13 that tape?" because the jurors couldn't put a name and a file  
14 with the person on the tape without someone explaining it to  
15 them.

16 So I understand what the problem is. It sounds to me  
17 like there were thousands of prescriptions and there were  
18 probably hundreds, if not thousands, of patients and, of  
19 course, I know that the government has issues with the veracity  
20 of the medical records, but that is something that the  
21 government is going to have to get into in terms of its case.

22 I think that what I said was that Jencks -- I can't  
23 even find it.

24 MS. CUCINELLA: Two weeks prior to trial.

25 THE COURT: Two weeks prior to trial. He's going is

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1 to send me a letter; I may move that back a week.

2 MS. CUCINELLA: Once we have a better sense of which  
3 defendants will be going to trial, I think that we will be  
4 willing to probably provide more information closer to as well.

5 THE COURT: Correct, okay.

6 MR. NELSON: Judge, I understand the government's  
7 response, though I certainly don't agree, but as it relates to  
8 those patients, one, we would have -- it's not Jencks material,  
9 this is Rule 16 material, it's patient records. These might  
10 not well be witnesses. These are records that the government  
11 is going to be introducing. They're going to say patients 9  
12 through 12 were the individuals who supposedly were recruited  
13 individuals but aren't testifying in the trial. So it's not  
14 Jencks material but yet they will be saying that these  
15 individuals were individuals who were improperly acquiring  
16 medication. The only means by which --

17 THE COURT: It would be kind of hard to say that if  
18 they don't either put them on the stand -- certainly not by  
19 introducing their medical records will they be able to do that.

20 MR. NELSON: I'm not exactly sure how the government  
21 is planning to do that.

22 THE COURT: Nor am I, but they don't have to tell you  
23 how they're going to prove their case.

24 MR. NELSON: My point is that to the extent they're  
25 attempting to say there is a group of individuals who they're

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1 not calling as witnesses who were receiving medically  
2 unnecessary medication, it's rather hard for a defendant to be  
3 able to establish through the medical charts of those  
4 particular patients that they might well have been people who  
5 should have been receiving that medication or it was  
6 appropriate and medically indicated for them to do so if we  
7 don't know in advance who they are. So we can't acquire their  
8 prior medical records to show the bases on which they  
9 originally wound up seeing this doctor or any of the other two  
10 doctors, the pain management as a result of injuries they  
11 sustained, either degeneratively or traumatically, that led to  
12 them being there, which would go to a defense. And we would in  
13 essence be prevented from presenting that aspect of the defense  
14 if we weren't provided that information in a timely manner.  
15 And two or three weeks is nowhere near sufficient time.

16 THE COURT: You have the medical records; is that  
17 correct?

18 MR. NELSON: Yes, we do.

19 THE COURT: Fine, you have the medical records.

20 MR. NELSON: The problem is --

21 THE COURT: Look through the medical records, find  
22 people who look like they were traumatically or degeneratively  
23 injured and go look them up. You have the medical records.

24 MR. NELSON: Very well, your Honor. Most  
25 respectfully, I disagree with the Court in the con --

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1 THE COURT: You disagree with me but you have the  
2 records, of course you do, you have the records.

3 MR. NELSON: The problem with the records is the  
4 government is claiming that all of the records are doctored.  
5 So how could we possibly, in reviewing those records, be in a  
6 position to be able to then corroborate by investigation that  
7 there are separate independent bases to show that those  
8 individuals indeed had traumatic or degenerative --

9 THE COURT: Here's the deal: The government has to  
10 identify who it is going to call as a witness, at the present  
11 time, two weeks before the trial, and give you all of the  
12 material in its position that you would be able to use to  
13 cross-examine those witnesses. I would consider information  
14 that they had terrible degenerative osteoarthritis for some  
15 years before they began visiting Dr. Mirilishvili to be Giglio  
16 material.

17 MR. NELSON: Then my request would be that the Court,  
18 instead of making it two to three weeks, make it as I requested  
19 in my motion, 60 days prior to trial, which really does give us  
20 a sufficient amount of time.

21 THE COURT: That I'm not going to do.

22 Okay.

23 MR. NELSON: Thank you, Judge. I'll write to the  
24 Court in terms of --

25 THE COURT: Oh, write me a letter. I never get enough

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1 letters.

2 MR. NELSON: Thank you, Judge.

3 THE COURT: Anything else from any other defense  
4 counsel?

5 You people are very quiet. All right. Well, in that  
6 case, I will see at least some of you on the 2nd of December.  
7 And I will see everybody or everybody who is still going to  
8 come to the party on February 18, which is when Mr. O'Neil has  
9 set the final pretrial conference. All right.

10 MR. NELSON: Thank you, Judge.

11 MS. CUCINELLA: Thank you, Judge.

12 (Adjourned)